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Attorneys for Plaintiff  
ALERE MEDICAL, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ALERE MEDICAL, INC., a California  
Corporation,  
  
Plaintiff,  
  
v.  
  
HEALTH HERO NETWORK, INC., a California  
Corporation,  
  
Defendant.

No. C-07-05054 CRB

**DECLARATION OF PATRICK T.  
WESTON IN SUPPORT OF ALERE  
MEDICAL, INC.'S SUPPLEMENTAL  
BRIEF OPPOSING TRANSFER  
PURSUANT TO 28 U.S.C. § 1404(A)**

1 I, Patrick T. Weston., declare and state as follows:

2 1. I am a counsel with Bingham McCutchen LLP, counsel of record for  
3 plaintiff Alere Medical, Inc. I am licensed to practice law in California. The following facts are  
4 true of my own personal knowledge, and if called as a witness I would testify competently to  
5 them.

6 2. Attached as Exhibit A is a true and correct copy of the Complaint in the  
7 action entitled *Health Hero Network, Inc., v. Alere Medical, Inc.*, Northern District of Illinois  
8 Case No. 07-CV-5031 (“the Chicago action”), filed on September 6, 2007.

9 3. Attached as Exhibit B is a true and correct copy Alere’s Answer and  
10 Counterclaims in the Chicago action, filed on October 1, 2007.

11 4. Attached as Exhibit C is a true and correct copy of U.S. Patent No.  
12 7,223,236 (“the ‘236 patent”).

13 5. To date, no discovery or initial disclosures have taken place in the  
14 Chicago action.

15 6. On Friday, November 9, 2007, a Request for Ex Parte Reexamination of  
16 the ‘236 patent was filed with the United States Patent and Trademark Office (“USPTO”). A  
17 true and correct copy (without exhibits) is attached as Exhibit D.

18 7. On November 14, 2007, Alere filed a motion to stay the Chicago action  
19 pending the outcome of the USPTO’s reexamination inquiry of the ‘236 patent. A true and  
20 correct copy of the Memorandum In Support Of Alere’s Motion To Stay This Litigation Pending  
21 The Reexamination Of The Patents In Suit (without exhibits) is attached as Exhibit E.

22 8. Attached as Exhibit F is a true and correct copy of the “Contact Us”  
23 section of the website for the law firm of Black Lowe & Graham, located at  
24 <http://www.blacklaw.com>. This page states that the firm is located in Seattle, Washington.

25 9. U.S. Patent No. 5,601,435 lists “Haverstock & Associates” as the  
26 prosecuting attorney, agent, or firm for that patent. (The ‘435 patent is attached to Alere’s  
27 complaint in this matter (Docket No. 1) at Exhibit B). Upon information and belief, Haverstock  
28 & Associates used to be located in Palo Alto, California, and its principal was Thomas B.

1 Haverstock. Attached as Exhibit G is a true and correct copy of Mr. Haverstock's attorney  
2 profile from the State Bar of California (downloaded from  
3 [http://members.calbar.ca.gov/search/member\\_detail.aspx?x=121232](http://members.calbar.ca.gov/search/member_detail.aspx?x=121232)) which states that Mr.  
4 Haverstock is now associated with the firm of Haverstock & Owens in Sunnyvale, CA.

5 10. Attached as Exhibit H is a true and correct copy of the home page for the  
6 website of Lumen Intellectual Property Services, located at <http://www.lumen.com>. This page  
7 states that the Lumen firm is located in Palo Alto, California.

8 11. Attached as Exhibit I is a true and correct copy of the Judicial Caseload  
9 Profile Report for the Northern District of California (taken from [http://www.uscourts.gov/cgi-](http://www.uscourts.gov/cgi-bin/cmsd2006.pl)  
10 [bin/cmsd2006.pl](http://www.uscourts.gov/cgi-bin/cmsd2006.pl)). For the twelve month period ending September 30, 2006, this report states  
11 that the median time from filing to trial of civil actions in the Northern District of California is  
12 25.0 months.

13 12. Attached as Exhibit J is a true and correct copy of the Judicial Caseload  
14 Profile Report for the Northern District of Illinois (taken from [http://www.uscourts.gov/cgi-](http://www.uscourts.gov/cgi-bin/cmsd2006.pl)  
15 [bin/cmsd2006.pl](http://www.uscourts.gov/cgi-bin/cmsd2006.pl)). For the twelve month period ending September 30, 2006, this report states  
16 that the median time from filing to trial of civil actions in the Northern District of Illinois is 26.4  
17 months.

18 I declare under penalty of perjury under the laws of the United States and the  
19 State of California that the foregoing is true and correct, and that this declaration was executed  
20 on November 14, 2007, at East Palo Alto, CA.

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22 \_\_\_\_\_/s/

23 Patrick T. Weston  
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